

**ARTICLE IV**  
**PERMITS AND PROCEDURES**

**4-1 PERMIT REQUIRED**

- (A) No person shall undertake any development activity subject to this Ordinance except in accordance with and pursuant to one of the following permits:
  - (1) A zoning permit or sign permit issued by the Zoning Administrator;
  - (2) A special use permit issued by the Board of Adjustment;
  - (3) A conditional use permit issued by the City Council;
  - (4) A Coastal Area Management (CAMA) permit issued by the NC Division of Coastal Management, if applicable; or
  - (5) An erosion control permit issued by the NC Department of Environment, Health, and Natural Resources.
- (B) Zoning permits, sign permits, special use permits, and conditional use permits are issued under this Ordinance only when a review of the application submitted, including the site plans contained therein, indicates that the development will comply with the provisions of this Ordinance if completed as proposed. Such plans and applications as are finally approved are incorporated into any permit issued, and except as otherwise provided herein, all development shall occur strictly in accordance with such approved plans and applications.
- (C) Physical improvements to land to be subdivided may not be commenced except in accordance with a major subdivision plat approved pursuant to Section 10-3 or a minor subdivision plat approved pursuant to Section 10-2.

**4-2 PERMIT EXEMPTIONS**

**4-2.1 Zoning Permit Exemptions**

The following are exempt from zoning permit requirements:

- (A) Any accessory building with a building dimension of 12 feet or less; and
- (B) Facilities (other than buildings) of a public utility or an electric or telephone membership corporation.

**4-2.2 Sign Permit Exemptions**

No sign permit shall be required for signs specifically exempted by Section 11-1.3.

## **4-3 PERMIT APPLICATIONS AND PLANS**

### **4-3.1 General Requirements**

- (A) Submission: Unless otherwise specified, all applications for permits under this Ordinance shall be submitted by the owner of the property or the authorized agent of such owner to the Zoning Administrator. The Zoning Administrator may require reasonable proof of agency from any person submitting an application as an agent.
- (B) Form of Submission: An application for any permit under this Ordinance shall be submitted in such form, number of copies and format as required by Appendices 1 and 3 together with such fees as required.
- (C) Waiver of Submission Requirements: The Zoning Administrator may waive submission of required elements of information when, in his opinion, such information is otherwise available or is not necessary to review the application. The Zoning Administrator may refuse to process an incomplete application.
- (D) Processing: All applications for permits shall be submitted, reviewed and processed in accordance with the requirements of this Ordinance.
- (E) Approved Plans: A copy of required plans or information submitted with the application shall be returned to the applicant after the Zoning Administrator has marked the copy either approved or disapproved and attested to same. A similarly marked copy shall be retained by the Zoning Administrator.
- (F) Health Department Construction Permit Required: A permit for any building or use for which a State or City Health Department permit for installation of a well or a sewage disposal system is required or for which approval by the State or City Health Department of an existing well or sewage disposal system is required, shall not be issued until such permit or approval has been issued by the State or City Health Department.
- (G) In this Ordinance, detailed or technical design requirements and construction specifications relating to various types of improvements (streets, utilities, etc.) are set forth in one or more of the appendices to this Ordinance. It is not necessary that the application contain the type of detailed construction drawings that would be necessary to determine compliance with these appendices, so long as the plans provide sufficient information to allow the permit-issuing authority to evaluate the application in the light of the substantive requirements set forth in the text of this Ordinance. However, whenever this Ordinance requires a certain element of a development to be constructed in accordance with the detailed requirements set forth in one or more of these appendices, then no construction work on such element may be commenced until detailed construction drawings have been submitted to and approved by the NCDOT, the applicable utility provider, or other appropriate approval authority. Failure to observe this requirement may result in permit revocation, denial of final subdivision plat approval, or other penalty as provided in Article V (Enforcement).

#### **4-3.2 Site Plan and Plot Plan Procedures**

- (A) Applicability.
  - (1) Plot Plan Required: No zoning permit for a single-family or two-family dwelling on a single lot shall be issued until a plot plan, prepared in accordance with Appendix 1, has been approved.
  - (2) Site Plan Required: No other zoning, special use, or conditional use permit shall be issued on a lot until a site plan, prepared in accordance with Appendix 1, has been approved for the development. No new nor amended site plan shall be required if an adequate site plan is already on file, there is no change in the parking requirements, or there is no increase in impervious surface area.
- (B) The Zoning Administrator may waive the requirement for a site plan if, in his judgement, it is determined that it is not necessary to complete the review of the permit application.
  - (1) Timing: Site plans shall be submitted to the Zoning Administrator in conjunction with a permit application.
  - (2) Site Plan Compliance: Site plans shall contain all applicable information listed in Appendix 1. A site layout meeting the requirements of Article 10-3.3 of this Ordinance may also serve as the preliminary subdivision plat.
- (C) Coordination With Other Procedures. To lessen the time required to obtain all necessary approvals, the site plan approval process may run concurrently with building plan review or other applications for approvals required for the particular project.
- (D) Site Plan and Plot Plan Approval.
  - (1) Approval of Site/Plot Plan: The site plan or plot plan shall be approved when it meets all requirements of this Ordinance or proper waivers and/or variances are obtained.
  - (2) Approval Authority:
    - (a) Site plans or plot plans submitted with zoning permit applications shall be approved by the Zoning Administrator. Site plans may be referred to the TRC for review and recommendations.
    - (b) Site plans submitted with special use permit applications shall be approved by the Board of Adjustment.
    - (c) Site plans submitted with conditional use permit applications shall be approved by the City Council.

- (d) Final approved site plans shall be submitted to the Planning Director within 180 days of approval by the appropriate approval authority or such plans shall be null and void.
  - (e) Additions to existing buildings that exceed 10% of the gross floor area of the building or require an additional five (5) or more parking spaces shall be approved by the Zoning Administrator upon recommendation of the Technical Review Committee.
- (3) Conditional Approvals: If the site plan is granted conditional approval, the applicant shall revise and resubmit the site plan. The Zoning Administrator shall review the revised site plan and, if it meets all the approval conditions and is otherwise substantially unaltered, shall signify on the plan the change from conditional approval to approval. If the site plan is not revised within sixty days to meet the approval conditions, or the applicant notifies the Zoning Administrator that he is unwilling to revise the site plan, it shall be deemed denied.

(4) Conditions for City Council Approval of Site Plans

It is recognized that in some cases particular problems are created in connection with a certain development. In these instances when a City Council members feels it is in the best interest of the City to review a site plan, the following conditions will pertain:

- a.} Within thirty days of the Technical Review Committee's (TRC) approval of a site plan, any City Councilperson may request the review of that plan.
- b.} The requested review shall be conducted at the next City Council meeting following the date of such request.
- c.} City Council will have twenty-one days from the date of this review to approve or deny the site plan. If the City Council grants conditional approval for the site plan, the applicant shall revise and resubmit the site plan to the Zoning Administrator. If the plan meets all the approval conditions of the TRC and of the City Council and is otherwise substantially unaltered, the Zoning Administrator shall sign final approval of the plan. If the site plan is not revised within sixty days to meet the approval conditions, or the applicant notifies the Zoning Administrator that he is unwilling to review the site plan, it shall be deemed denied.
- d.} The following guidelines shall be used in City Council review of site plans:
  - 1.} The plan protects the public from unsafe and inefficient vehicular and pedestrian circulation.
  - 2.} The plan is in accordance with all applicable City Codes and Ordinances.

- 3} The plan will not materially endanger the public health or safety;
- 4) The plan will not substantially injure the value of adjoining or abutting property.
- 5} The plan will be in harmony with the area in which it is to be located.

(Section 4-32(D)(4) added by City Council March 5<sup>th</sup>, 2001.)

(E) Street and Utility Construction.

- (1) Plans: When required, street and utility construction plans for all public or private streets, and water, sanitary sewer, and storm sewer facilities shall be submitted to the applicable authority following conditional approval or approval of the site plan. A recommendation from the Technical Review Committee is required prior to the approval of street and utility construction plans. For each phase of the site plan, street and utility construction plans shall include all improvements lying within or adjacent to that section as well as all water and sanitary sewer lines lying outside that section and being required to serve that section.
- (2) No Construction Without Plan Approval: None of the improvements listed above shall be constructed until the street and utility construction plans for such improvements have been reviewed and approved by the applicable authority.
- (3) Inspections: Work performed pursuant to approved street and utility construction plans shall be inspected and approved by the appropriate authority.

- (F) Detention Ponds and Soil Erosion and Sedimentation Control Devices Installation. Any approved wet detention pond(s) and soil erosion and sedimentation control device(s) may be installed prior to approval of street and utility construction plans. A fence, with self-latching gates, shall be constructed around the entire perimeter of any wet detention pond, if required by the Public Works Director.

#### **4-4 PERMIT ISSUANCE**

The issuance of a zoning, sign, special use, or conditional use permit authorizes the recipient to commence the activity resulting in a change in use of the land or, (subject to obtaining a building permit), to commence work designed to construct, erect, move, or substantially alter buildings or other substantial structures. However, except as provided in Sections 4-8 and 4-9, the intended use may not be commenced and no building may be occupied until all of the requirements of this Ordinance and all additional requirements imposed pursuant to the issuance of a conditional use or special use permit have been complied with.

## **4-5 INSPECTIONS AND INVESTIGATIONS**

### **4-5.1 Periodic Inspections**

The Zoning Administrator shall have the right, upon presentation of proper credentials, or inspection warrant, if necessary, to enter on any premises within the planning jurisdiction of Elizabeth City at any reasonable hour for the purposes of inspection, determination of plan compliance or other enforcement action.

### **4-5.2 Investigations**

The Zoning Administrator shall have the power to conduct such investigation as he may reasonably deem necessary to carry out his duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any complaints or alleged violations of this Ordinance.

### **4-5.3 Written Statements**

The City Council or its agent shall also have the power to require written statements, certificates and certifications or the filing of reports under oath, with respect to pertinent questions relating to complaints or alleged violations of this Ordinance.

## **4-6 ZONING AND SIGN PERMITS**

- (A) Requests for a zoning or sign permit shall be submitted to the Zoning Administrator by filing an application form along with a scaled drawing of the sign(s) that identifies the height and width of the sign(s). Applications for a zoning or sign permit may be a separate form or may be combined with the City's building permit application form.
- (B) The Zoning Administrator shall issue the zoning permit unless he finds, after reviewing the application and consulting with the applicant, that:
  - (1) The requested permit is not within his authority according to the Table of Permissible Uses; or
  - (2) The application is incomplete; or
  - (3) If completed as proposed in the application, the development will not comply with one or more requirements of this Ordinance.
- (C) The Zoning Administrator shall issue the sign permit unless he finds after reviewing the application and consulting with the applicant that:
  - (1) The requested permit is not in compliance with the requirements of Section 11-1, Signs; or
  - (2) The application is incomplete.

## **4-7 SPECIAL USE PERMITS AND CONDITIONAL USE PERMITS**

### **4-7.1 Special Use Permit Review Process**

An application for a special use permit shall be submitted to the Board of Adjustment by filing a copy of the application with the Zoning Administrator in the planning department 25 working days prior to the Board of Adjustment meeting at which the request will be reviewed. The review process for a special use permit shall include:

- (A) Planning Department and Technical Review Committee review and recommendation in accordance with Section 4-7.3;
- (B) Planning Commission review and recommendation in accordance with Section 4-7.3;
- (C) Public hearing held by the Board of Adjustment; and
- (D) Board of Adjustment review and action.

### **4-7.2 Conditional Use Permit Review Process**

An application for a conditional use permit shall be submitted to the City Council by filing a copy of the application with the Zoning Administrator 25 days prior to the City Council meeting at which the request will be reviewed. The review process for a conditional use permit shall include:

- (A) Planning Department and Technical Review Committee review and recommendation pursuant to Section 4-7.4;
- (B) Planning Commission review and recommendation in accordance with Section 4.7.4;
- (C) Public hearing held by the City Council; and
- (D) City Council review and action.

If the City Council refuses to schedule a public hearing, the application is summarily denied. If the City Council agrees to schedule a public hearing, the public notice required for the hearing shall be in accordance with Section 4-7.5.

### **4-7.3 Recommendations on Special Use Permit Applications**

- (A) Before being presented to the Board of Adjustment, an application for a special use permit shall be referred to the Technical Review Committee for a recommendation and to the Planning Commission for a recommendation in accordance with this Section. The Board of Adjustment may not hold a public hearing on a special use permit application until the Planning Commission has had an opportunity to consider the application pursuant to standard agenda procedures. The Board of Adjustment shall, however, upon the failure of the Planning Commission to act on an application as outlined in subsection (C), proceed with holding a public hearing.

- (B) When presented to the Planning Commission, the application for a special use permit shall be accompanied by a report setting forth the Planning Department's and the TRC's proposed findings concerning the application's compliance with Section 4-3 and the other requirements of this Ordinance, as well as any staff or TRC recommendations for additional requirements to be imposed by the Board of Adjustment. If the staff or TRC report proposes a finding or conclusion that the application fails to comply with any requirement of the Ordinance, the report shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.
- (C) The Planning Commission shall consider the application and the attached Technical Review Committee report within 45 days from the initial date the application was received by the Planning Commission. If the Planning Commission fails to act on the application within the 45-day period, the Zoning Administrator shall forward the application to the Board of Adjustment. The Planning Commission, at its discretion, may hear from the applicant or members of the public.
- (D) After reviewing the application, the Planning Commission shall report to the Board of Adjustment whether it concurs in whole or in part with the Technical Review Committee's proposed findings and conditions, and to the extent there are differences, the Planning Commission shall propose its own recommendations and the reasons therefor.
- (E) In response to the Planning Commission's recommendations, the applicant may modify his application prior to submission to the Board of Adjustment, and the Technical Review Committee may likewise revise its recommendations.
- (F) The Board of Adjustment shall consider the application, the Technical Review Committee report and Planning Commission recommendation within 90 days from the date of consideration by the Planning Commission at a regularly scheduled Board meeting or within such further time consented to by written notice from the applicant. Failure of the Board of Adjustment to take final action on an application within the prescribed time limit, or extensions thereof, shall result in approval of the application as submitted. *[Section amended 7/11/05; and January 27, 2014, Text Amendment Case 02-13].*

#### **4-7.4 Recommendations on Conditional Use Permit Applications**

- (A) Before being presented to the City Council, an application for a conditional use permit shall be referred to the Technical Review Committee for a recommendation and to the Planning Commission for a recommendation in accordance with this Section. The City Council may not hold a public hearing on a conditional use permit application until the Planning Commission has had an opportunity to consider the application pursuant to standard agenda procedures. The City Council shall, however, upon the failure of the Planning Commission to act on an application as outlined in subsection (C), proceed with holding a public hearing.



- (B) When presented to the Planning Commission, the application for a conditional use permit shall be accompanied by a report setting forth the Planning Department's and the TRC's proposed findings concerning the application's compliance with Section 4-3 and the other requirements of this Ordinance, as well as any staff or TRC recommendations for additional requirements to be imposed by the City Council. If the staff or TRC report proposes a finding or conclusion that the application fails to comply with any requirement of the Ordinance, the report shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.
- (C) The Planning Commission shall consider the application and the attached Technical Review Committee report within 45 days from the initial date the application was received by the Planning Commission. If the Planning Commission fails to act on the application within the 45-day period, the Zoning Administrator shall forward the application to the City Council. The Planning Commission, at its discretion, may hear from the applicant or members of the public.
- (D) After reviewing the application, the Planning Commission shall report to the City Council whether it concurs in whole or in part with the Technical Review Committee's proposed findings and conditions, and to the extent there are differences, the Planning Commission shall propose its own recommendations and the reasons therefor.
- (E) In response to the Planning Commission's recommendations, the applicant may modify his application prior to submission to the City Council, and the Technical Review Committee may likewise revise its recommendations.

#### **4-7.5 Public Hearing Requirements and Procedures**

- (A) No special use nor conditional use permit shall be approved until a public hearing has been held by the permit-issuing board.
- (B) For petitions being heard and decided by Council, the City Clerk shall publish a notice of the public hearing; for petitions being heard and decided by the Board of Adjustment, the Secretary to the Board of Adjustment shall publish notice of the public hearing. Notices shall be in a newspaper having general circulation in the area. The notice shall be published not less than ten days, but not more than 25 days, before the date affixed for the hearing. In computing this period, the date of publication shall not be counted but the date of the hearing shall be.

The notice required by this Section shall:

- (1) State the date, time, and place of the public hearing;
- (2) Summarize the nature and character of the permit request;
- (3) Reasonably identify the property affected by the permit request;
- (4) State that the full permit request application can be reviewed at the office of the Zoning Administrator; and

- (5) State that substantial changes in the permit request may be made following the public hearing.
- (C) Notice shall be given to neighboring property owners by mailing a written notice not later than ten days, but not more than 25 days, before the date of the hearing to those persons as described: the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; to any other person who makes a written request for such notice; and to entities who have listed for taxation real property any portion of which is located within 100 feet of the lot that is the subject of the application. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice.
- (D) Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; to any other person who makes a written request for such notice; and to the owners of all properties any portion of which is within 100 feet of the property involved in the permit request. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice.
- (E) Within the same time period described in subsection (C), The Zoning Administrator shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The Zoning Administrator may also take any other action he/she deem to be useful or appropriate to give notice of the public hearing on any permit request.
- (F) The Zoning Administrator shall make every reasonable effort to comply with the notice provisions set forth in this Section. However, it is the permit-issuing board's intention that no failure to comply with any of the notice provisions [except those set forth in subsection (B) and the requisite posting in subsection (D)] shall render any permit request invalid.
- (G) At the conclusion of the public hearing, the permit-issuing board may proceed to vote on the permit request, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure. Section 4-7.6 delineates specific actions that the Board of Adjustment must take on requests for special use permits and Section 4-7.7, which the City Council must take on requests for conditional use permits.
- (H) The permit-issuing board is not required to take final action on a permit request within any specific period of time, but it should proceed within a reasonable time period on permit requests since inordinate delays can result in the applicant incurring unnecessary costs.

- (I) Subject to subsection (J) and quasi-judiciary decisions and judicial review rules in Article 7, the Board of Adjustment or the City Council, respectively, shall approve the requested permit unless it concludes, based upon the information submitted at the hearing, that:
  - (1) The requested permit is not within its jurisdiction according to the Table of Permissible Uses; or
  - (2) The application is incomplete; or
  - (3) If completed as proposed in the application, the development will not comply with one or more requirements of this Ordinance.
- (J) Even if the permit-issuing board finds that the application complies with all other provisions of this Ordinance, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:
  - (1) Will materially endanger the public health or safety; or
  - (2) Will substantially injure the value of adjoining or abutting property; or
  - (3) Will not be in harmony with the area in which it is to be located; or
  - (4) Will not be in general conformity with the land development plan or other plans officially adopted by the City Council.
- (K) The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this Ordinance remains at all times on the applicant. The burden of persuasion on the issue of whether the application should be turned down for any of the reasons set forth in Subsection (J) rests on the party or parties urging that the requested permit should be denied.

*[Section amended January 27, 2014, Text Amendment Case 02-13]*

#### **4-7.6 Board of Adjustment Action on Special Use Permit Applications**

In considering whether to approve an application for a special use permit, the Board of Adjustment shall proceed in the same manner as the City Council when considering conditional use permit applications (Section 4-7.7).

- (A) The Board of Adjustment shall consider whether the application is complete. If the Board of Adjustment concludes that the application is incomplete and the applicant refuses to provide the necessary information, the application shall be denied. A motion to this effect shall specify either the particular type of information lacking or the particular requirement with respect to which the application is incomplete. A motion to this effect, concurred in by a simple majority vote of the Board of Adjustment, shall constitute the Board's finding on this issue. If a motion to this effect is not made and concurred in by a simple

majority vote, this shall be taken as an affirmative finding by the Board of Adjustment that the application is complete.

- (B) The Board of Adjustment shall consider whether the application complies with all of the applicable requirements of this Ordinance. If a motion to this effect passes by the necessary majority vote, the Board of Adjustment need not make further findings concerning such requirements.

If such a motion fails to receive the necessary majority vote or is not made, then a motion shall be made that the application be found not in compliance with one or more requirements of this Ordinance. Such a motion shall specify the particular requirements the application fails to meet. A separate vote may be taken with respect to each requirement not met by the application, and the vote of the number of members equal to more than one fifth of the board membership (excluding vacant seats) in favor of such a motion shall be sufficient to constitute such motion a finding of the Board of Adjustment. As provided in Subsection 4-7.5 (H), if the Board of Adjustment concludes that the application fails to meet one or more of the requirements of this Ordinance, the application shall be denied.

- (C) If the Board of Adjustment concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in Subsection 4-7.5 (I). Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion. Since such a motion is not in favor of the applicant, it is carried by a simple majority vote.
- (D) Appeals of actions by the Board of Adjustment regarding Special Use Permits may be taken to the Pasquotank County Superior Court within thirty days from the date of the written decision of the Board as prescribed in Section 7-12 of the Unified Development Ordinance. *(Adopted 3/14/05)*

*[Section amended January 27, 2014, Text Amendment Case 02-13]*

#### **4-7.7 City Council Action on Conditional Use Permits**

- (A) Upon receipt of a recommendation from the Planning Commission, the City Council shall review the application for a conditional use permit and shall hold a public hearing on the application. Public notice of the public hearing shall be in accordance with the provisions of Section 4-7.5. The City Council, in considering conditional use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements of the Board of Adjustment including that no vote greater than a majority vote shall be required for the City Council to issue a conditional use permit.
- (B) Following the public hearing, the City Council may proceed to vote on the permit request, refer it to committee for further study, or take any other action consistent with its usual rules of procedure.
- (C) In considering whether to approve an application for a conditional use permit, the City Council shall proceed according to the following format:

- (1) The City Council shall consider whether the application is complete. If no member moves that the application be found incomplete (specifying either the particular type of information lacking or the particular requirement with respect to which the application is incomplete) then this shall be taken as an affirmative finding by the City Council that the application is complete.
- (2) The City Council shall consider whether the application complies with all of the applicable requirements of this Ordinance. If a motion to this effect passes, the City Council need not make further findings concerning such requirements. If such a motion fails or is not made then a motion shall be made that the application be found not in compliance with one or more of the requirements of this Ordinance. Such a motion shall specify the particular requirements the application fails to meet. Separate votes may be taken with respect to each requirement not met by the application.
- (3) If the City Council concludes that the application fails to comply with one or more requirements of this Ordinance, the application shall be denied. If the City Council concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application. Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion.

#### **4-7.8 Additional Requirements on Special Use and Conditional Use Permits**

- (A) Subject to subsection (B), in granting a special or conditional use permit, the Board of Adjustment or City Council, respectively, may attach to the permit such reasonable and appropriate requirements in addition to those specified in this Ordinance as will ensure that the development in its proposed location:
  - (1) Will not endanger the public health or safety;
  - (2) Will not injure the value of adjoining or abutting property;
  - (3) Will be in harmony with the area in which it is located; and
  - (4) Will be in conformity with the land development plan, thoroughfare plan, or other plan officially adopted by the City Council.
- (B) The permit-issuing board may not attach additional conditions that modify or alter the specific requirements set forth in this Ordinance unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements.
- (C) Without limiting the foregoing, the permit-issuing board may attach to a permit a condition limiting the permit to a specified duration.
- (D) All additional conditions or requirements shall be entered on the permit.

- (E) All additional conditions or requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirement of this Ordinance.
- (F) A vote may be taken on application conditions or requirements before consideration of whether the permit should be denied for any of the reasons set forth in Subsections 4-7.5 (H) or 4-7.5 (I).
- (G) Written decisions and recordation of permits shall follow the rules established in Section 7-12 of this Ordinance.

*[Section amended January 27, 2014, Text Amendment Case 02-13]*

#### **4-8 AUTHORIZING USE OR OCCUPANCY BEFORE COMPLETION OF DEVELOPMENT UNDER ZONING, SPECIAL USE OR CONDITIONAL USE PERMITS**

- (A) In cases when, because of weather conditions or other factors beyond the control of the zoning, special use, or conditional use permit recipient (exclusive of financial hardship) it would be unreasonable to require the permit recipient to comply with all of the requirements of this Ordinance before commencing the intended use of the property or occupying any buildings, the permit-issuing authority may authorize the commencement of the intended use or the occupancy of buildings (insofar as the requirements of this Ordinance are concerned) if the permit recipient provides an adequately secured performance bond or other security satisfactory to the permit-issuing authority to ensure that all of these requirements will be fulfilled within a reasonable period (not to exceed twelve months). The proposed performance bond and security shall be reviewed and approved by the City Attorney, however, prior to the permit-issuing authority authorizing the intended use or occupancy.
- (B) When the permit-issuing board imposes additional requirements upon the special use or conditional use permit recipient in accordance with Section 4-7.8 or when the developer proposes in the plans submitted to install amenities beyond those required by this Ordinance, the permit-issuing board may authorize the permittee to commence the intended use of the property or to occupy any building before the additional requirements are fulfilled or the amenities installed if it specifies a date by which or a schedule according to which such requirements must be met or each amenity installed and if it concludes that compliance will be ensured as the result of any one or more of the following:
  - (1) A performance bond and security satisfactory to the City Attorney is furnished;
  - (2) A condition is imposed establishing an automatic expiration date on the permit, thereby ensuring that the permit recipient's compliance will be reviewed when application for renewal is made;
  - (3) The nature of the requirements or amenities is such that sufficient assurance of compliance is given by Section 5-4 and Section 5-6.

#### **4-9 COMPLETING DEVELOPMENTS IN PHASES**

- (A) If a development is constructed in phases or stages in accordance with this Section, then, subject to subsection (C), the provisions of Section 4-4 and Section 4-8 shall apply to each phase as if it were the entire development.
- (B) As a prerequisite to taking advantage of the provisions of subsection (A), the developer shall submit plans that clearly show the various phases or stages of the proposed development and the requirements of this Ordinance that will be satisfied with respect to each phase or stage.
- (C) If a development that is to be built in phases or stages includes improvements that are designed to relate to, benefit, or be used by the entire development (such as a swimming pool or tennis courts in a residential development) then, as part of his application for development approval, the developer shall submit a proposed schedule for completion of such improvements. The schedule shall relate completion of such improvements to completion of one or more phases or stages of the entire development. Once a schedule has been approved and made part of the permit by the permit-issuing authority, no land may be used, no buildings may be occupied except in accordance with the schedule approved as part of the permit, provided that:
  - (1) If the improvement is one required by this Ordinance then the developer may utilize the provisions of Section 4-8(A); or
  - (2) If the improvement is an amenity not required by this Ordinance or is provided in response to a condition imposed by the permit-issuing board, then the developer may utilize the provisions of Section 4-8(B).

#### **4-10 EXPIRATION OF PERMITS AND SITE PLANS**

- (A) Except as provided in subsection (F), zoning, special use, conditional use, and sign permits (including approved site or plot plans) shall be obtained within one year of approval of the final site plan if applicable and shall expire automatically if, within six months after the issuance of such permits:
  - (1) The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use; or
  - (2) Less than ten percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site. With respect to phased development (see Section 4-9), this requirement shall apply only to the first phase.
- (B) If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period of one year, then the zoning, special use, conditional use, or sign permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of Section 4-11.

- (C) The permit-issuing authority may extend for a period up to six months the date when a zoning, special use, conditional use, or sign permit would otherwise expire pursuant to subsections (A) or (B) if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods up to six months upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.
- (D) For purposes of this Section, the permit within the jurisdiction of the Board of Adjustment or the City Council is issued when such board votes to approve the application and issue the permit. A zoning or sign permit within the jurisdiction of the Zoning Administrator is issued when the earlier of the following takes place:
  - (1) A copy of the fully executed permit is delivered to the permit recipient, and delivery is accomplished when the permit is delivered to the permit applicant; or
  - (2) The Zoning Administrator notifies the permit applicant that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions, such as having the permit executed by the property owner so it can be recorded, if required under Section 4-11(B).
- (E) Notwithstanding any of the provisions of Article VI (Nonconforming Situations), this Section shall be applicable to permits issued prior to the date this Section becomes effective.
- (F) Special and conditional use permits with a vested right established in accordance with Section 4-15, Zoning Vested Rights, shall expire at the end of the two-year vesting period established pursuant to Section 4-15.
- (G) At least fifty percent of the gross floor area shown on the approved site plan shall be completed within three years after approval of the site plan; the remaining fifty percent of the gross floor area shown on the site plan shall be completed within the following two years thereafter or within five years from the approval of the final site plan. Failure to complete construction as required herein shall automatically void the unconstructed portions of the approved site plan unless the Planning Director finds that all of the following conditions are met:
  - (1) Request for an extension has been made to the Planning Director prior to the expiration date;
  - (2) Unconstructed portions of the final site plan conform to all applicable ordinances, laws, city policies, Comprehensive Plan and other city plans in effect at the time of the requested extension;
  - (3) Adjacent streets have not been reclassified by the Thoroughfare Plan to an extent that the completion of the Unconstructed portion of the site plan would overburden adjacent streets beyond capacity;



- (4) Allowing the unconstructed portion of the site plan to be completed will not overburden public facilities and services such as storm water, water and sewer lines, streets, fire, public safety and trash collection; and
- (5) There shall only be one extension permitted, and that not to exceed a time period of three years.

The applicant can appeal the Planning Director's decision to the City Council. The appeal must be made in writing to the City Council within thirty days of the Planning Director's decision to deny an extension.

#### **4-11 EFFECT OF PERMIT ON SUCCESSORS AND ASSIGNS**

- (A) Zoning, special use, conditional use, and sign permits authorize the permittee to make use of land and structures in a particular way. Such permits are transferable. However, so long as the land or structures or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted, then:
  - (1) No person (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit; and
  - (2) The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit was obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property and wish to use it for or in connection with purposes other than those for which the permit was originally issued.
- (B) Whenever the recording of a special use or conditional use permit is required by the Board of Adjustment or City Council as a condition of approval, nothing authorized by the permit may be done until the record owner of the property provides documentation that indicates that the permit has been recorded in the County Registry and indexed under the record owner's name as grantor.

#### **4-12 AMENDMENTS TO AND MODIFICATIONS OF PERMITS**

- (A) Insignificant deviations from the permit (including approved plans and preliminary plats) approved by the Board of Adjustment, the City Council, or the Zoning Administrator are permissible and the Zoning Administrator may authorize such insignificant deviations. A deviation is insignificant if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.
- (B) Minor design modifications or changes in permits (including approved plans and preliminary plats) are permissible with the approval of the permit-issuing authority. Such permission may be obtained without a formal application, public

hearing, or payment of any additional fee. For purposes of this Section, minor design modifications or changes are those that have no substantial impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.

- (C) All other requests for changes in approved plans and preliminary plats will be processed as a modification to the original application. If such requests are to be acted upon by the Board of Adjustment or City Council, new conditions may be imposed only on the specific site or area requested to be modified in accordance with Section 4-7.8, but the applicant retains the right to reject such additional conditions by withdrawing his request for an amendment and may then proceed in accordance with the previously issued permit.
- (D) The Zoning Administrator shall determine whether amendments to and modifications of permits fall within the categories set forth above in subsections (A), (B), and (C).
- (E) A developer requesting approval of changes shall submit a written request for such approval to the Zoning Administrator, which request shall identify the changes. Approval of all changes must be given in writing.
- (F) A vested right established in accordance with Section 4-15 shall not be extended by any amendments or modifications to an approved site specific development plan unless expressly provided for by the City Council.

#### **4-13 RECONSIDERATION OF BOARD ACTION ON SPECIAL USE AND CONDITIONAL USE PERMITS**

- (A) Whenever (i) the Board of Adjustment disapproves a special use permit application, (ii) the City Council disapproves an application for a conditional use permit, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the respective board until two years have elapsed unless the applicant clearly demonstrates that:
  - (1) Circumstances affecting the property that is the subject of the application have substantially changed; or
  - (2) New information is available that could not with reasonable diligence have been presented at a previous hearing. A request to be heard on this basis must be filed with the Zoning Administrator within the time period for an appeal to superior court (see Section 5-7). However, such a request does not extend the 30-day period within which an appeal must be taken.
- (B) The Board of Adjustment or City Council may, however, at any time consider a new application affecting the same property as an application previously denied. A new application is one that differs in some substantial way from the one previously considered.

#### **4-14 MAINTENANCE OF COMMON AREAS, IMPROVEMENTS, AND FACILITIES**

The recipient of any zoning, special use, conditional use, or sign permit, or his successor, shall be responsible for maintaining all common areas, improvements or facilities required by this Ordinance or any permit issued in accordance with its provisions, except those areas, improvements or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. As illustrations, and without limiting the generality of the foregoing, this means that private streets and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended, and that required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

Specific operation and maintenance agreements are required for developments located within watershed protection overlay districts that must provide stormwater control structures (see Sections 12-1.11 and 12-1.13).

#### **4-15 ZONING VESTED RIGHTS**

- (A) A vested right shall be established, upon petition by the owner of the property, after the approval or conditional approval of a site specific development plan by the City Council in accordance with the provisions outlined in this section. A right which has been vested as provided for in this section shall, as a general rule, remain valid for two years and shall attach to and run with the land.
- (B) Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this subsection shall have the meaning indicated when used in this section.
  - (1) **Landowner.** Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site specific development plan.
  - (2) **Property.** All real property subject to the regulations and restrictions of this Ordinance as well as the zoning district boundaries established by this Ordinance and depicted on the official zoning map.
  - (3) **Site specific development plan.** A plan which has been submitted to Elizabeth City by a landowner describing in detail the type and intensity of use for a specific parcel or parcels of property. Such plan shall be in the form of a site plan required to obtain a conditional use permit or in the form of a preliminary plat. The information required by Section 4-3, Section 10-3.3, and Appendix 1, as applicable, shall be included. All site specific development plans shall be approved by the City Council.
  - (4) **Vested right.** The right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.
- (C) A vested right shall be deemed established, following the receipt of a petition from the property owner, upon the effective date of approval by the City Council

of a site specific development plan. Following the approval of a site specific development plan, the Zoning Administrator shall issue a vested right certificate to the landowner which indicates the duration of the vesting period, the conditions, if any, imposed on the approval of the site specific development plan, and any other information determined by the Zoning Administrator to be necessary to administer the vested right.

- (D) A vested right shall confer upon the landowner the right to undertake and complete the development and use of the property as delineated in the approved site specific development plan. The City Council may approve a site specific development plan upon such terms and conditions as may be determined necessary to protect the public health, safety, and welfare. Failure to comply with the approved terms and conditions shall result in a forfeiture of vested rights.
- (E) Approval by the City Council of a site specific development plan shall follow the procedural requirements for the issuance of a conditional use permit as outlined in Section 4-7. Changes in or modifications to an approved site specific development plan shall be made only with the concurrence of the City Council in accordance with the provisions of Section 4-12.
- (F) A vested right obtained under this section runs with the land and is valid for two years from the effective date of approval by the City Council of a site specific development plan. A vested right shall not be extended by any amendments or modifications to an approved site specific development plan unless expressly provided for by the City Council. A vested right shall expire at the end of two years if no building permit applications have been filed with the City to construct the use or uses proposed in the approved site specific development plan. If building permits are issued, the provisions of NCGS 160A-418 and NCGS 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the lack of progress during the two-year vesting period.
- (G) A vested right, once established or provided for in this section, precludes any zoning action by the City which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in the approved site specific development plan, except:
  - (1) With the written consent of the affected landowner,
  - (2) Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan;
  - (3) To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the City, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;

- (4) Upon findings, by ordinance after notice and a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the City of the site specific development plan; or
  - (5) Upon the enactment or promulgation of a state or federal law or regulation which precludes development as contemplated in the site specific development plan, in which case the City may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and a public hearing.
- (H) The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by the City, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes.
  - (I) Notwithstanding any provisions of this Section, the establishment of a vested right shall not preclude, change, or impair the authority of the City to enforce provisions of this Ordinance governing nonconforming situations or uses.
  - (J) A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such vested rights.
  - (K) The City shall not require a landowner to waive his vested rights as a condition of developmental approval.
  - (L) A petition for annexation filed with the City of Elizabeth City under NCGS 160A-31 or NCGS 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under NCGS 160A-385.1 or NCGS 153A-344.1. A statement that declares that no zoning vested right has been established under NCGS 160A-385.1 or NCGS 153-344.1, or the failure to sign a statement declaring whether or not a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.

#### **4-16 CERTIFICATE OF ZONING COMPLIANCE**

- (A) Except as otherwise specifically exempted elsewhere in this Ordinance, no building shall be occupied, no land shall be used, and the use of any land shall not be changed until a certificate of zoning compliance has been issued by the Zoning Administrator.
- (B) The certificate of zoning compliance shall state that the building and/or proposed use of land complies with the provisions of this Ordinance.

- (C) The certificate of zoning compliance shall be presented by the applicant to the Elizabeth City Building Inspector prior to the City's issuance of a certificate of occupancy.

A temporary certificate of zoning compliance may be issued by the Zoning Administrator, for a period not to exceed six months, during alteration or construction for partial occupancy of a building pending completion. Such temporary certificate shall bear the dates of issuance and expiration on the certificate, shall be clearly marked, 'Temporary', and shall stipulate such conditions and safeguards as will protect the safety of the occupants and the public.

#### **4-17 COMPLIANCE WITH CAMA GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN**

- (A) Prior to the issuance of any zoning, special use, or conditional use permit, the Zoning Administrator and local CAMA Permit Officer shall determine whether the proposed use or structure is located within an Area of Environmental Concern. This determination shall result from both an on-site inspection and a review of the official AEC overlay map. If the proposed use or structure is located within an Area of Environmental, the Zoning Administrator and local CAMA Permit Officer shall certify that the proposed use or structure complies with development standards of the *State Guidelines for Areas of Environmental Concern* (15 NCAC 7H) and the CAMA permit shall be issued to the applicant prior to the issuance of any zoning, special use, or conditional use permit.
- (B) The Coastal Resources Commission has adopted use standards for development along estuarine shorelines and development within coastal wetlands, estuarine waters, and public trust areas. Specific use standards have been adopted for such development activities as navigation channels, canals, boat basins, hydraulic dredging, drainage ditches, marinas, docks, piers, bulkheads, beach nourishment, groins, and freestanding moorings.